IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5370 OF 1988

1. Krishna Raghu Suryawanshi deceased by his heir Shri Ramu Krishna Suryawanshi deceased by his heirs:-

1.a) Shri Bhagawan Ramu Suryawanshi, since deeased by his heris 1A(1) Smt.Sakhubai Ramu Suryawanshi and ors. ..Petitioners

Vs.

1. Shri Shankar Dadu Katkar deceased by his heirs:-

1.a) Shri Vishnu Shankar Katkar since deceased by his heirs 1A-I) Smt.Laxmibai Vishnu Katar and ors. ..Respondents

Mr. M.L. Patil for petitioners 1(A) to 1(D).
Court service noitce served on Petitioner No.1(E).
Mr. S.G. Deshmukh for respondent nos.1A(i) to 1A)iii), 1-(b), 1-(d), 1-(f) to 1-(i).
Respondent Nos.1(c) & 2(a) to 2(c) are served.

CORAM: B.H. MARLAPALLE, J.

Date : July 19, 2006.

ORAL JUDGMENT:

1. This petition filed under Article 227 of the Constitution brings in question the Judgment and Order dated 24/3/1988 passed by the learned Member of the Maharashtra Revenue Tribunal at Pune thereby

dismissing the Revision Application No.165 of 1984. By the impugned order, the order passed by the Additional Tahsildar and ALT, Shirol on 5/12/1979 directing issuance of certificate under Section 32M to the present respondent no.1 in respect of Southern half of the suit land and upheld in Tenancy Appeal No. 18 of 1980 by the Sub Divisional Officer, Karvir Division, Karvir has been confirmed. The undisputed facts relevant to the challenge in this petition could be briefly stated as under:-

. The suit land i.e. agricultural land in Gat No.756 (revised Survey No.94/1) admeasuring 2 Hectares and 37 Ares and located in village Shirol was owned by Shri Baburao Dhondajirao Jagdale and the petitioner was a tenant on the said land as on 1/4/1957. Sometimes in the year 1961 the petitioner made an application before the Additional Tahsildar for initiating proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Bombay Tenancy Act for short). However, this application was initially dismissed for non prosecution, but on the request of the petitioner it came to be restored. On or about 12/8/1963 the proceedings initiated by the

petitioner came to be closed on the ground that in the meanwhile the landlord was issued a certificate under Section 88C of the Bombay Tenancy Act. It appears that the present respondent no.1 approached the Additional Mamlatdar and ALT by filing an application under Section 32-O of the Bombay Tenancy Act by impleading the landlords as the opponents and claimed the ownership certificate to be issued under Section 32M after deciding his right to purchase the half portion of the suit land and on remittance of the purchase price to be paid. This application was allowed by the Additional Mamlatdar on or about 14/2/1975 on the basis of the consent of the landlords who were the LRs of the original landlord Shri Baburao Jagdale and the price of the land was fixed at Rs.600/-. The landlord was granted permission to sell the land to the applicant i.e. the respondent no.1 for the consideration of Rs.600/-. The respondent no.1 claimed to have deposited some amount and waited for a certificate to be issued under Section 32M of the Bombay Tenancy Act and he did not hear anything further from the Additional Mamlatdar. He, therefore, submitted an application on or about 1/8/1979 and the said application came to be registered as Tenancy Case

No.135/1979. The said application came to be allowed by the Additional Tahsildar as per his Judgment and Order dated 5/12/1979. The Tahsildar declared that the Northern half portion of the suit land will be sold to the present petitioner under Section 32-C(1) read with 32G of the Bombay Tenancy Act and the price was fixed at Rs.1140/- to be paid in five equal instalments of Rs.228/- commencing from 1/12/1980 with usual interest. So far as the remaining half land on Southern side is concerned it was directed by the Additional Tahsildar that certificate under Section 32M in terms of the order dated 10/4/1964 passed by the ALT shall be issued to the present respondent no.1. So far as the second portion of the Additional Tahsildar's order is concerned, the petitioner was not happy and, therefore, he filed Tenancy Appeal No.18 of 1980 and the said appeal was dismissed by the SDO on 11/6/1984. As noted earlier, by the impugned order passed by the MRT, both these orders have been confirmed but by drawing some additional conclusions which were not recorded either by the Additional Tahsildar or by the SDO.

2. The petitioner claims that Krishna Raghu

Suryawanshi was a protected tenant in respect of the entire land admeasuring 2 Hectares and 37 Ares as on 1/4/1957 and the landlord inducted the respondent no.1 forcibly on the half of the suit land in the year 1960-61. At the instance of the landlord, respondent no.1 was causing interference in his possession and, therefore, the petitioner filed RCS No.116 of 1960,

but the same came to be dismissed in default.

3. Mr. Deshmukh the learned counsel for the respondent no.1 on the other hand claims that the respondent no.1 was inducted and he was in cultivation of half of the Southern side of the suit land with the knowledge of the petitioner as well as the landlord even prior to 1960, but the Mutation Entry in his name was effected only for the agricultural year 1960-61 onwards and it was confirmed sometimes in July 1962. The petitioner did not challenge or agitate by instituting appropriate proceedings after his RCS No.116 of 1960 was dismissed in default against the landlord and respondent no.1 and sought possession of the Southern half of the suit land and this itself indicates that the petitioner was aware that the respondent no.1 was inducted in half of the suit land

legally. Mr.Deshmukh also pointed out that the order passed on the application submitted under Section 32-O of the Bombay Tenancy Act was not challenged by the landlord at any time till the respondent no.1 submitted an application for issuance of certificate of ownership under Section 32M and which came to be registered as Tenancy Case No.135/1979. This would go to show, as per Mr. Deshmukh, that the petitioner was aware that the respondent no.1 was legally inducted in the Southern half portion of the suit land and with the knowledge of the petitioner.

4. There is no dispute that when the respondent no.1 submitted an application under Section 32-O of the Bombay Tenancy Act, he did not implead the present petitioner and the application was decided on the basis of the consent of the landlord. This order dated 14/2/1975 is the foundation of the claim made by the respondent no.1 and all the authorities below have concurrently upheld this claim of respondent no.1. The MRT has gone one step further and drawn inferences in support of its finding that the respondent no.1 was cultivating the suit land in its entirety even as on 1/4/1957 and the Tribunal noted that both the

Additional Tahsildar and SDO had recorded such a finding. There can be no dispute that the Additional Tahsildar and the SDO have not recorded such a finding and, therefore, the MRT fell in manifest error in recording the conclusion that the respondent no.1 was cultivating the suit land in its entirety as on 1/4/1957. In fact, the Additional Tahsildar in his order dated 5/12/1979 has recorded the following conclusions:-

(a) The petitioner alone was the tenant of the suit land as on 1/4/1957.

(b) The exemption certificate granted to the landlord under Section 88C postponed the tenant's right to purchase the suit land to 1/4/1962 from 1/4/1957/

(c) Respondent No.1 came in possession of half of the portion on Southern side admeasuring 2 acres and 32 gunthas of the suit land in the year 1960-61 and continued to hold till 1974-75.

(d) The respondent no.1 had paid land revenue for the years 1975-76 to 1978-79.

(e) The suit land was cultivated by the petitioner and respondent and they were in possession of half of the suit land each.

Based on these conclusions, the Additional Tahsildar declared that the respondent no.1 had purchased half of the suit land (Southern Side) with effect from 1/4/1962.

5. The 7/12 extracts placed on record and not disputed by either parties and more particularly about their authenticity, go to show that the petitioner's name was entered as the cultivator in the years 1952-53 to 1959-60. Even in the certificate issued under Section 88C of the Bombay Tenancy Act, the name of the original petitioner alone was shown as the tenant and the said certificate did not indicate that the respondent no.1 was cultivating any portion of the suit land and the said certificate is for the entire land admeasuring 2 Hectares and 37 Ares. Though, the

date of issuance of the certificate is not traceable, there is no dispute that the application filed by the petitioner under Section 32G was disposed and the proceedings were closed on 12/8/1963, on the basis of the said certificate granted in favour of the landlord. In addition, the application filed by the respondent no.1 under Section 32-O of the Bombay Tenancy Act clearly indicated that he had admitted his entry on half of the suit land in the year 1960-61. The Additional Tahsildar was not right in his conclusions that the tillers' day was postponed from 1/4/1957 to 1/4/1962 as the provisions of Section 32C were attracted on account of the certificate under Section 88C of the Bombay Tenancy Act having been issued. At the same time, it is not in much dispute that the respondent no.1 has been in cultivation of half of the Southern side of the suit land from the year 1960-61 onwards uninterruptedly and at no point of time the petitioner had taken any steps for restoration of the said portion to him inspite of the fact that the proceedings decided under Section 32-O at the instance of the respondent no.1 may not be binding on him as he was not a party therein.

6. The petitioner himself has failed to take a clear stand as to whether the Southern half portion of the suit land was alleged to be surrendered by him or he was forcibly evicted from the same and, therefore, it will be difficult at this stage to adjudicate upon his right on the said portion of the suit land and more so on the basis of the law laid down in the case of Ramchandra Keshav Adke (Dead) by Lrs. vs. Govind Joti Chavare and ors. (AIR 1975 SC 915). The RCS No.116 of 1960 filed by the petitioner against the respondent no.1 alleging that the said respondent was causing disturbances over his possession, came to be dismissed in default and there is nothing on record to show that the petitioner got the said suit restored or filed a fresh suit seeking restraining orders against the respondent no.1 at any time even during the pendency of this petition.

7. On the other hand, the order passed by the Additional Tahsildar on the application submitted by the respondent no.1 for issuance of ownership certificate under Section 32M of the Bombay Tenancy Act and in the application decided under Section 32-O on 14/2/1975 and as noted little while ago, the

petitioner was not a party in the said proceedings and the application was decided on the basis of the consent of the landlord. Therefore, while confirming the Additional Tahsildar's order passed on 5/12/1979 in respect of the declaration under Section 32G read with Section 32C (1) in favour of the petitioner and in respect of half Northern portion of the suit land, the order in the second part directing issuance of certificate under Section 32M in terms of the ALT's order dated 10/4/1964 is unsustainable and rights of the respective parties i.e. the petitioner and respondent no.1 as cultivators of the said land as on 1/4/1957 or any time thereafter will have to be adjudicated upon afresh by hearing all the parties concerned, including the landlord and on perusal of the revenue record.

8. In the premises, this petition succeeds partly and the order passed by the Maharashtra Revenue Tribunal on 24/3/1988 is hereby quashed and set aside while confirming the order passed by the Additional Tahsildar on 5/12/1979 in favour of the present petitioner. The order of the Additional Tahsildar dated 5/12/1979 to the extent passed in favour of the

present respondent no.1 is hereby quashed and set aside and it is directed that the Additional Tahsildar and ALT, Shirol shall reopen the proceedings under Section 32-O instituted by the respondent no.1 and re-adjudicate the rival claims of the petitioner and the respondent no.1 in respect of the Southern half portion of the suit land. This shall be done after hearing the parties concerned and by taking into consideration all the documentary and oral evidence, as expeditiously as possible and preferably within a period of six months from 1/8/2006. Undoubtedly, the possession of the respective parties on the respective shares as at present is not disturbed by allowing this petition partly.

9. Rule made absolute in terms of the above directions but without any order as to costs.

(B.H. Marlapalle,J.)